

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

VENISE THERESA GONYA, as representative)
of the Estate of Joseph E. Gonya, deceased)
individually and on behalf of all others similarly)
situated,; ROXANNE S. SCAIFE, as)
representative of the Estate of Arnold L. Stone,)
deceased, individually and on behalf of all others)
similarly situated,)

Plaintiffs,)

vs.)

ROGER A. SEVIGNY, Commissioner of the)
State of New Hampshire Insurance Department,)
in his official capacity as Insurance Commissioner)
and liquidator of The Home Insurance Company;)
PETER W. HEED, Attorney General of New)
Hampshire, in his official capacity,)

Defendants.)

CIVIL ACTION NO.

[CLASS ACTION]

PRELIMINARY INJUNCTION

The Court heard Plaintiffs' Motion for Preliminary Injunction and Defendants' opposition thereto, and makes the following findings:

1. The Court finds that Plaintiffs have demonstrated a substantial likelihood of prevailing on the merits of their claims that RSA 402-C:40(I) is unconstitutional as written and as applied to Plaintiffs.

2. The Court finds that Plaintiffs will suffer irreparable injury since they and other third parties with claims against companies insured by The Home Insurance Company are

required to release their common law cause of action against insured companies in order to file Proof of Claims in the insurance liquidation.

3. The Court finds this injury is irreparable, as it has the effect of denying people access to the claims process unless they are willing to sacrifice constitutionally protected right.

4. It is highly unlikely the state can constitutionally condition the receipt of a benefit on the relinquishment of a constitutional right.

5. Defendants will suffer comparatively little harm if the deadline is tolled pending the outcome of Plaintiffs' challenge to the constitutionality of RSA 402-C:40(I).

NOW THEREFORE, Plaintiffs' Motion for Preliminary Injunction is GRANTED. Defendants are enjoined from enforcing any deadlines under the provisions of RSA 402-C:40(I) in The Home Insurance Company liquidation. In addition, Defendants are enjoined from enforcing the third party release provision, until further order of this Court.

SO ORDERED.

Dated:

U.S. District Judge